* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CRL.A. NO.792/2005

% Date of Decision : 7th of August, 2007

\# DINESH SHARMA ..... Appellant
! Through : Mr. Bhupesh Narula, Advocate

versus

$ STATE .....Respondent
^ Through : Ms. Richa Kapoor, APP for State

* **CORAM:**
HON'BLE MR. JUSTICE R.S. SODHI
HON'BLE MR. JUSTICE B.N. CHATURVEDI

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

: **R.S. SODHI, J. (Oral)**

Crl.M.A. No. 7927/2007

Heard. Allowed. For the reasons stated in the application, order dated 10th July 2007 dismissing the appeal in default is recalled and the appeal is restored to its original

number and file.

CRL.A. 792/2005

1. This is an appeal arising out of judgment and order of Additional Sessions Judge, New Delhi in Sessions Case No. 13/1999 FIR No. 93/1999 Police Station Vasant Kunj, whereby the learned Judge by his judgment dated 17th August 2005 held appellant guilty for the offence under Sections 364/377/302 IPC and further by an order dated 6th September 2005 imposed the following sentences:-

> "Hence the convict Dinesh Chand Sharma is sentenced to undergo life imprisonment and to pay a fine of Rs.1000/- for the offence u/s 302 IPC and in default of payment of fine to undergo simple imprisonment for a period of one month, he is further sentenced to undergo a fine of Rs.500/- for the offence u/s 364 IPC and in default of payment of fine to further undergo simple imprisonment for a period of fifteen days, he is further sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.500/- for the offence u/s 377 IPC and in default of payment of fine to undergo simple imprisonment for a period of fifteen days. However, all the sentences shall run concurrently. The benefit as provided u/s 428 Cr.P.C. shall also be given to the convict."

2. The facts of the case as stated in the judgment of the trial Court are:-

"That on 21.2.99 SI Madhav Krishan received DD No.16A vide which information was received that Shiv Shanker gave information on telephone that his son Anil aged about 8/10 years had gone with other boy on cycle, his cycle has been recovered but there is no information about his son and crowd gathered there. On receipt of this information, SI Madhav Krishan alongwith Ct. Ajad Singh reached Bhagwan Singh Camp where Ram Kumar Dubey met them and gave his statement to the effect that his son Anil Kumar Dubey aged about 10 years had gone to Lal Khet at about 8 a.m to distribute newspapers and at about 10 a.m, his cycle has been recovered but he is missing and he could not locate his son. His statement was recorded in DD No. 22A, PCR people were informed and wireless message was also sent, DD No. 16A was kept pending and when Anil Kumar Dubey could not be located despite best efforts, thereafter, a case under Section 365 IPC was registered. During investigation, the IO inspected the spot, site plan was prepared from where the cycle was recovered, the cycle was taken into police possession, statement of witnesses was recorded. Thereafter, investigation was marked to Inspector and during the investigation, on 22.2.99, Dinesh Sharma who was coming from Lal Khet side, he was stopped and was interrogated for Anil Kumar Dubey. Initially, Dinesh Sharma did not disclose anything but when he was interrogated thoroughly, then he disclosed that he had kidnapped Anil Kumar Dubey with the intention to kill him. He was taken to some other place and thereafter, he did carnal intercourse with him and killed him by strangulating him with the help of his muffler and after killing him, the dead body was thrown in the bushes of Sarkanda and to mi-lead the police, the cycle was thrown at some other place. His disclosure statement was recorded in which he disclosed all facts

about this case that he kidnapped Anil Kumar, committed carnal intercourse with him, cleaned blood from his private part with the help of his underwear and threw that underwear in bushes and thereafter, he killed him by strangulating him with the help of muffler. He further disclosed that after killing Anil Kumar Dubey, he washed his hands with water from the nearby Khan and piece of muffler was also kept in one side and then, he came back to his jhuggi and at his jhuggi, he changed his clothes as there were blood stains on his pant and shirt and thereafter, he left his jhuggi. On the pointing out of accused, dead body of Anil Kumar Dubey was recovered, he also got recovered the underwear and muffler. In the meantime, the Crime team was called and spot was got inspected by the Crime team, scene of occurrence was also got photographed. The dead body was sent to the mortuary of Safdur Jung Hospital. The chappal of the deceased were also seized from the spot, the blood sample was collected from the body of deceased and was kept in plastic bottles and was sealed and taken into police possession. After completion of investigation, the challan was filed in the Court. The case was committed to court of Sessions."

3. The prosecution in order to establish its case examined as many as thirteen witnesses. Of them, the star witness appears to be PW-7, who had allegedly seen the deceased alongwith the accused at about 8:30 AM on 21st February 1999. He is also the witness of arrest of the accused as also the disclosure statement and the recovery of the dead body and other articles at the instance of the

accused. The trial Court relying heavily on the testimony of PW-7 and the other material on record arrived at a conclusion that the prosecution has firmly established its case beyond shadow of doubt.

4. Counsel for the appellant states before us that the trial Court has gone wrong in evaluating the material on record in as much as the first information given to the police by PW-6, which was recorded in DD Ex. PW3/A states that the deceased left the house on a bicycle alongwith another boy in the morning. Another information passed to the police, is recorded in DD 22-A Ex. PW 11/A to the effect that the child is missing since 8:30 AM and that the bicycle of the child has been recovered. He contends that the prosecution has not investigated as to who was the person who left alongwith the child in the morning from the house and where the deceased part company. He contends that PW-7 is not a reliable witness and has been introduced at the instance of the investigation only to bolster the case. For this purpose, counsel submits that PW-7's statement that he has seen the child/deceased in the company of accused in the morning soon after 8:30 AM at the mines

cannot be believed and is contrary to the report recorded in DD 22-A. He also contends that according to PW-6 he received information that the body of his child was lying at the mines and that he may identify the same. This information was received by PW-6 at 2 O'Clock while the arrest memo shows that the accused was arrested at 3 O'Clock on 22nd February 1999. He contends that the body having been discovered prior to the arrest cannot be said to be at the instance of the accused and the statement of PW-7 to the contrary cannot be relied upon. Counsel also takes benefit of the medical evidence which shows that the child has been sodomized but there are no corresponding injuries on the accused. Further the scientific evidence does not reveal that the semen found on the clothing of the deceased matches that of the accused. Under these circumstances counsel submits that the accused cannot be held guilty of the offences charged.

5. Counsel for the State, on the other hand, contends that PW-7 is a reliable witness and has got no cause to depose against accused. She also contends that the material on record taken, together with oral testimonies leads to the only conclusion than the accused is guilty of the

offence. Counsel also states that the trial Court as given cogent reasons on the basis of material available to hold the appellant guilty of the charge and those reasons cannot be faulted with.

6. We have heard learned counsels at great length and with their assistance have carefully gone through the material on record. We find that the first information given to the police in DD 16-A and 22-A indicated that the child left the house alongwith another boy on a bicycle on 21st February 1999 at around 8:30 A.M. The bicycle was later recovered at about 10:00 A.M. but there was no trace of the child. It is only in the evening that PW-7 surfaces, to state that he had seen the child at 8:30 AM in the mines near Bhagwan Singh Camp area. PW-7 also states that while he was giving information to the police on 22nd February 1999 the accused was taken into custody. The arrest memo shows the time of arrest at 3:00 P.M. He also states that the accused made a disclosure statement leading to the discovery of the dead body at the mines. However, PW-6 states that he had already received information about the discovery of the body of the child at the mines at 2:00 PM

and that he was asked to go and identify the body. In which event it was not possible for PW-7 to have witnessed the recovery of the dead body at the instance of the accused at 3:30 PM nor can it be said that the discovery of the dead body has been made at the instance of the accused since it had already been discovered at 2 O'Clock prior to the arrest of accused. Coupled with this, we have material on record by way of MLC of the accused that there were no signs on the accused having sodomized the deceased who was ten year old boy. From the scientific evidence we find that the semen found on the clothing of the deceased does not match with that of the accused nor the blood found on the articles of the deceased and the accused match with that of the deceased.

7. In these circumstances it would be difficult to deduce that the deceased had been sodomized by the accused and thereafter strangulated. Even the last seen account does not appear to be accurate. In this view of the matter, we find that the prosecution has not been able to connect the accused with the crime and that the trial Court was wrong in relying on the testimony of PW-7.

Consequently we set aside the judgment of conviction and sentence and acquit the appellant of the charges framed.

Crl.M.A. No. 5497/2007 and Crl.M.(B) No. 722/2007 stand disposed of accordingly.

(R.S. SODHI)
JUDGE

(B.N.CHATURVEDI)
JUDGE

August 07, 2007
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